



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

February 17, 2017

BY ECF & EMAIL

The Honorable Alison J. Nathan
United States District Judge
Southern District of New York
Thurgood Marshall
United States Courthouse
40 Foley Square, Chambers 2102
New York, New York 10007

**Re: United States v. Wey,
15 Cr. 611 (AJN)**

Dear Judge Nathan:

The Government writes in response to a question the Court raised during oral argument today about the appropriate remedy assuming, *arguendo*, that the Government presented evidence tainted by an improper search to the grand jury. The defendant argued that the appropriate remedy would be the dismissal of the indictment. That is not the law. As courts have long held, the exclusionary rule does not apply to grand jury proceedings. *United States v. Calandra*, 414 U.S. 338, 349-52 (1974) (exclusionary rule inapplicable to use of allegedly tainted evidence in grand jury proceedings); *see also United States v. Medrano*, No. 08 Cr. 60 (WHP), 2012 WL 3055758, at *1 (S.D.N.Y. July 20, 2012) (exclusionary rule applicable only to Government's case-in-chief and not to grand jury proceedings).

As noted in the Government's post-suppression hearing brief and during oral argument today, the record evidence demonstrates that the search evidence that the Government presented to the grand jury consisted of materials that Agent McGuire had previously determined were relevant when he conducted his search in 2013. (Tr. 337). However, even assuming the Government had presented evidence from Agent Miller's search in 2015 to the grand jury that was not previously captured by Agent McGuire, the remedy would not be dismissal of the indictment. Instead, the Government would only be precluded from presenting the evidence from Agent Miller's search at trial.

Thank you for your consideration of this matter.

Respectfully submitted,

PREET BHARARA
United States Attorney

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